

TO HIS GRACE

WILLIAM

DUKE of HAMILTON

THEIR

MAJESTIES

HIGH

COMMISSIONER

And the Honourable

HUMBLY SHEWETH THE

Answers for *Henry Navilpayne*, To the Indite-  
ment raised at the Instance of Their Majestie  
Advocate, before the High Court of  
Parliament.

**W** Hereas it is Lybelled in the said Inditement, That the Defender did come here to Scotland for pursuewing Treasonable practises, against the Government; And that being thereupon apprehended & Imprisoned, he hath hitherto prosecute the said design by keeping Correspondence with disaffected Persons and Enemies to Their Majesties Government, & did openly declare, that there was an Invasion designed both *Home &c in England*, and that the Defender did carry on the same under disguised names, both for Persons and Things; And that his said Project is already found, and declared by a vote of Parliament, past upon a letter alleged written by the Defender, dated the 3d. of December 1692: And which letter is *verbatim* contained in the said Inditement, and a Commentar or Exposition put thereupon by my Lord Advocate; And pretending, That there are several other letters written, and subscribed by the Defender, by which his hand write, and guilt of the premisses will evidently appear.

It is Answered for the Defender, That, He is exceedingly surpris'd to see such an Inditement presented against him, And, the rather, That being a Stranger, and absolutely ignorant of the Laws and Customs of this Kingdom, He should have received an Inditement upon Thursday last, to Compare and Answer this day, And so, not having six free dayes! And Lawyers having refused to give him Advice before they were Authoris'd by their Majesties Commissioner, and the Estates of Parliament, to do the same. It is impossible for the Defender, to have all these Evidences read in so short a time, which he would have adduced for Vindication of his own innocence, anent all that is lybelled against him, in case he had been charged upon fifteen free dayes, as (conform as the Defender is informed) is usual to be practis'd in the like cases, Especially where the Defender was for so long time a close prisoner, and so precluded from having the Advice or converse of any person, whereby he might have been assist'd to prepare himself for this Tryal; And therefore, He humbly begs, and expects, from the High and Honourable Court of Parliament, That they will be pleas'd to allow him some further time to have his Defences and instructions thereof, in readinels against this Inditement.

But least it should be pretended, That the Defender were inclin'd to shift and tergiverse in this Affair, Albeit he hath not all the proofs and Evidence of his innocence here in readinels, which otherwise he could have adduced, in case a competent time had been allowed him; Yet for convincing their Majesties High Commissioner, and the Honourable Estates of Parliament (as far as is possible upon such a surprise) of the Defenders innocence, He doth absolutely deny the Inditement, and whole Members Qualifications, Circumstances, and Aggravations therein contained; And as to that point of the lybel anent the Defender his coming to Scotland, out of a treasonable design, denying, as said is, It is represented for him, That as he hopes it is well known to several Honourable Members of Parliament, That the pannal upon his first entering within the Kingdom, was apprehended without any warrant from Authority: by a number of Countrey People; who were occasionally convocate together for the time, And brought in to *Edinburgh*, where he was immediately imprisoned; and in which place, and in *Stirling* and *Blacknes*, he hath continued now prisoner for the space of more then three years; And for more then two of these years a close Prisoner: And the true design of the Pannals coming for Scotland was that he being a Roman Catholic, And apprehensive, that those of his persuasion might meet with some severities in England: And having

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having sent some of his Effects abroad, he did resolve to have gone off the Kingdom, and lived privately; But there being an Embargo then put upon all the Ships in *England*, so that he could get no occasion for going abroad at any Harbour there; He came for *Scotland* out of a harmless design, to get the occasion of shipping here: And which is evident and undeniable, and clear from all Doubt, That there was not found in his Cabin, when he was first apprehended, any Papers relating to the Government by manner of way, and the only Paper then found upon him, being a Catalogue of the initial letters of five mens names, with two Letters subjoynd to each of these two Initial Letters, he did before the Lords of Privy Council, when he was under Torture, Freely and Candidly expose these Initial Letters, and designations thereto subjoynd, by declaring that J. G. L. S. was understood. *John Gilles* Skipper in *Leith*, where the Pannal was intended to have come and stayed until he had got occasion of Shipping abroad, and that the other two to which the two letters M. A. were subjoynd, were Merchants at *Amsterdam*: And the last two to which the letters B. P. were subjoynd, were Bankers at *Paris*, with whom the Pannal had settled some of his Effects: And the pannal did then condescend upon the names and surnames of the said four persons, And that there were then such persons in *Amsterdam* and *Paris*, as the pannal did then condescend upon: Neither then was, nor as yet can be contraverted, so that the pannal admits that their Majesties Advocate should as a preface to this indictment, alledge that the pannals coming to *Scotland*, was out of a Treasonable design, thereby to represent him as unfavourable to the Members of the High and Honourable Court of Parliament, He being a Stranger to this Kingdom, and absolutely innocent thereof, as is above represented: And that their Majesties Advocate should farther insinuate, that the pannal during his imprisonment should have been tampering with Enemies, for disturbing of the Government, and peace of the Kingdom: It being clear and obvious, That a prisoner, especially a close prisoner, to whom paper, pen, and ink, and access from all other persons were discharged, could not be in any possible capacity, for managing or carrying on any such contrivances or designs: And albeit the pannal his long and tedious imprisonment, and what he suffered while he was prisoner, could not but be grievous to any Mortal: Yet he patiently endured the same, with that just submission, and humble acquiescence that is due to Authority: And therefore he humbly conceives, that Charity it self will vindicate a poor Stranger from any such imputation, And that he needs not make use of any other legal Argument for his Vindication thereof: And in Case the Pannal were Conscious to himself of any such Guilt or Design, as truly he is not, Yet he hath this Unanswerable Defence in Law, That having endured Torture two several times, and being Interrogat upon the Occasion, and his design of his coming for *Scotland* whilst he was under the Torture, And having denyed any other Design, then as is above represented, viz: to go abroad, and live privately, he cannot now be Indited or pursued upon that account, conform to the Law and Customs of all Nations.

And as to that part of the Inditement, bearing that the Pannal did frequently declare that there was an Invasion designed, &c. It is Answered, that denying the same, yet the Common Discourse of the Countrey, being these two years by past, that there was an Invasion designed from *France* into *Britain*: The Pannal his repeating the Common and ordinary Discourse of the Countrey; And which was contained in several publick News Letters, can never be stretched to make him lyable to the Crimes and Pains libelled. 2do. The Pannal not being a *Scots* Subject, and never having received any Benefice or Protection from the Government in *Scotland*: But being an *Englishman*, and there being more freedom and Liberty of Speech allowed in *England*, than is permitted by the Law of *Scotland*, albeit any Rash Expressions had escaped the Pannal (and which he absolutely denyes) yet he could only be Tryed and Punished therefore, conform to the Laws of his Native Countrey of *England*, by whose Laws & Customs He was obliged to Walke and Conform his Life and Deportment into, and not conform to the Laws of *Scotland*, whereof he was no Subject; And which he neither knew, nor was presumed or obliged to know. 3tio. The Pannal being Naturally Melancholy, and His Melancholy being much augmented and increased by His long Imprisonment & Sufferings. It is offered to be proven, that during all the time of His Imprisonment, His Conversation & Discourse was Harmless & Innocent, & Free & Open, as is Natural to all *Englishmen*: So that in Charity (if any Discourse hath escaped Him) The same ought to be Interpreted, as designed only to suport himself against the Growth and Increase of his Melancholy, especially seeing it cannot be made appear, that in his Discourses he did Tamper with any Person, But on the contrair, that he used that same freedom of Discourse with all concerned in the Government and Authority, with whom he had Occasion to converse, which he did Utter and Express to any other person whatsoever. And it is not conceiveable how such Discourses can be stretched to infer any Plot or Contrivance by the Pannal, when the same was publicly Talked and uttered by him, to those who were concerned in the Government.

And as to that part of the Libel, mentioning an Vote or Opinion of Parliament; The Pannal humbly conceives, that he himself cannot at all be Obligated to make any answer thereto, there being no such Vote or Opinion of Parliament, or Double thereof, given to him with his Inditement. 2do. Neither (as the Pannal humbly conceives) can he any wayes be concerned therein, as to this Inditement presented against him: Because albeit the least suspicion may give the Government occasion to secure the Kingdom against Plots and Mischiefs, yet where there is no Vote or Act of Parliament, fixing the guilt against the Pannal Nominatum, He can never be precluded from any Competent defence for securing of his Life, by any such Vote to the passing whereof the Pannal was not called.

And as to the last & material part of the Inditement, founded upon a missive Letter allcaded written by the Pannal: And the Commentar and exposition thereof contained in the inditement, and my Lord Advocat, his offering to prove the same to be the Pannals hand Write; *Comperations literarum*, and by other papers and missive Letters under the Pannals own hand, ready to be produced.

It is Answered, that the Pannal doth absolutely deny that ever he Wrote any Letter of the Tenor, and Contents Libelled, and the said Principal Letter ought to have been produced and shewn to the Pannal himself. And he allowed to consider the same before he can be obliged to make any Answer thereto. 2do. By the double of the said pretended Letter, as it is set down at the end of the Copy of the Inditement given to the Pannal, The same appears neither to be subscribed by the Pannal, nor to be detected for any person whatsoever; So that it is obvious to common sense, that the said Pretended Letter hath been allennary the product of the same disordered and Melancholly brain. 3tio. It is not at all Libelled, that ever this pretended Letter was sent abroad, or delivered to any Person whatsoever.





ever, nor doth the Inditement condescend upon any person, by whom the same was conveyed away, nor in whole Custody the said pretended Letter was found, without all which, were specially libelled and intended. The Inditement can never be made relevancy to sustain this Criminal libel and conclusion against the Pannal, because in case such a special Condescendance were made, The Pannal would exculpate himself by referring to, and proving by these persons Oaths, that the said pretended Letter had been conveyed and delivered to them by some other person than the Pannal; and that the same was the hand write of some other person than the Pannal, and that the Tenor, and import thereof was absolutely different from, and inconsistent with the exposition and Commentar, put thereupon, by my Lord Advocate. 410. Albeit a person in a Melancholly or distemper, should Scible over a ridiculous and impertinent paper for the ease of his disturbed fancie for the time, yet in case he should either before he subscribed the same, and before he directed it to any person cancel the said impertinent and ridiculous paper; or let the same fall by as neglected such a paper; albeit thereafter found in the Custody of the Melancholly Person or in his Room, would never make the said Melancholly person lyable to the Crimes and pains libelled; unless he had dispersed and sent the same abroad; because *hoc ipso*, that he never made use thereof, by directing the same to any person. Law presumes that he passed from, and repented of that which the distempered fitt of his melancholly had formerly prompted him to.

And as to that part of the inditement, bearing that my Lord Advocat Intends to prove *Comparatio Literarum*, that the said pretended missive Letter is the Pannals hand write. It is answered, 1<sup>mo</sup>. That seeing the Pannal absolutely denies the same to be his hand write, or that he had accession thereto, or knows any thing of the desighe thereof in the least, yet he humbly represents to my Lord Commissioners his Grace, and the Honourable Estates of Parliament, that it is an uncontraverted principle in Law, that every man is presumed to be innocent and free from all guilt and vice, until the contrair thereof be insinuated against him by a clear probation. So by the Laws and Customes of all Nations, and by the opinion of all Doctors that ever wrote upon the Criminal Law; This is uncontraverted and undenyable, that the guilt of any Crime, by which a Capital conclusion for taking away a mans life may be inferred, can be fixed upon any person, except by a positive probation, as clear as the Sun shining in his Meridian: And neither the Law nor Custom of any Nation did ever allow Capital Crimes to be proven by conjectures or presumptions: And GOD Almighty himself by the mouth of *Moses*, requires two or three witnesses in all such cases: So that for my Lord Advocat to pretend to have a presumptive or conjectural probation sustained to him against the Pannal, who is a poor stranger, for taking away of his Life, is against the Law and practise of this, and all other Nations. 2<sup>do</sup>. Albeit *Comparatio Literarum* and of her papers have been sustained to Adminiculate a write, and to make up the defects of the solemnities thereof; yet no instance can be given, where ever such a probation was sustained Relevant, to fix a Capital guilt upon any person, to take away his Life. 3<sup>io</sup>. As all probation, especially in cases capitally Criminal, ought to be clear as the Sun, and positive, and pregnat, and incapable of any doubty, or uncertainty: So it is referred to my Lord Commissioner, his Grace, and the Honourable Estates of Parliament, whether a probation by comparison of Letters, and hand-writes, can be so pregnant, clear, and certain, that it is absolutely incapable of being redargued by other documents, or whether or not the same be in all cases subject to doubtfulness and uncertainty, seeing the most that can be inferred from such a probation is, That the hand Write are like to others, and (as a like, is not the same). So it is certain that many hand writes are like to others; And it is notterly known, and offered to be proven, That some persons have attained to that perfection of Writing, that they are able to counterfeit whole sheets of paper, as Written by any other person, to that exactness and perfection, that the person himself whose hand Write is feigned and counterfeited, can scarcely be able to deny the same, to be his own hand Write; And seeing a decision in Parliament, in this case will be a Rule & precedent, & have the force of a Law, in all criminal cases for the Future; It is Referred to the consideration of the High & Honourable Court of Parliament, what the dangerous consequence of such a preparative, might in process of time amount to, and whether the lives and fortunes of any Subject: Be not at the discretion of any silly Rogue who hath the skill and villany to counterfeit his hand Write. 4<sup>to</sup>. This is also an undenyable principle both in Law and Religion, that it is better to let a Thousand guilty persons go free, then that the blood of an Innocent person should be shed, Because, albeit a guilty person should escape the hand of Justice for a time. Almighty GOD might thereafter suffer him to fall in an other snare, By which he might thereafter be brought to condigne punishment for all: And which is not only clear from the instances of *Joab* and *Shimei*: But many instances thereof might be given in this and our Neighbour Nations: And the book entituled GODS Revenge against Murder, hath many examples thereof; Whereas on the other hand, the shedding of the blood of an innocent person, is like water spilt upon the ground, which cannot be gathered up, or recovered, but lyes as a burden upon the Land, calling for Vengeance from Heaven: And this is a common principle received, and constantly repeated in the mouths of all Mankind, That the case of a Defender, when pursued for his life, is alwayes most favourable; And when there is any thing doubtful, either as to the Relevancy or probation which may admit of a twofold sense or interpretation, The Exposition and Interpretation Thereof, is alwayes to be made in favours of the pannal, and Defenders: And by the Opinion of all Lawyers, *Jura sunt agenda*, That is, the Laws themselves are to be stretched, and even forced so far as is possible in favours of the pannal, for absolving him from the crimes lybelled, and preservation of his blood. 5<sup>to</sup>. Neither can my Lord Advocate be allowed to make use of any letters for probation against the pannal, seeing no such letters nor doubles thereof were given out to the pannal, with his inditement, as they ought to have been.

And as to the Commentar and Exposition of that pretended letter, whereupon the Inditement is founded, which my Lord Advocate hath made, The Pannal not being at all concerned in the Letter, he cannot be concerned in such Exposition or Commentar. My Lord Advocat thinks fit, or fancies with himself to put upon the same: And albeit he doth admire the quickness of my Lord Advocates Fancie in that commentar; Yet he humbly receives, that his Fancie and Opinion can never be sustained to inter any crime or guilt against the pannal; Because, 1<sup>mo</sup>. The whole strain of that Exposition, being an alledged Design in the Writer; As no Law can be alledged for allowing a Design, which is only the thought of a Mans breast, to be proven by Witnesses, or by other Mens conjectures; So there is no instance thereof can be adduced in this or any other Nation, The enquiring into and judging the thoughts of the heart, being the prerogative of GOD Almighty, which He hath reserved to Himself, excluding all Mortals from any share thereof. 2<sup>do</sup>. As the design and meaning

meaning of the Writer of that pretended letter, is neither in Law probable by Witnesses, nor can the design thereof be inferred from presumptions or conjectures. So it is referred to the Wisdom of the Parliament, Whether or not the stretches made by my Lord Advocate in that exposition, be either probable or consistent with themselves. Because that the Libel tending to infect the pannel his keeping a Treasonable correspondence with Enemies abroad. My Lord Advocate neither condescends upon the persons names, or designation, with whom the said correspondence is alledged to have been kept, and without condescendance upon the same, the Relevancie cannot be sustained. 2<sup>do</sup>. Can any Rational Man presume or imagine, That the late King would take up his measures in matters of the greatest importance, from a person of so little signification and interest, and of so little conduct, as the pannel is known to be: Especially, considering the circumstances the pannel was in at the time, and for several years preceeding, being alwayes a prisoner, and for the most part of that time a close prisoner. 3<sup>in</sup>. How can the late King, his late Declaration for *England*, be pretended to be the product and consequence of this pretended missive letter, whereupon the Inditement is founded, as my Lord Advocate expressly lybels. Seeing it is clear, That the said pretended letter, did never come to the late Kings hands: For, if it had once come to his hands, how is it possible that it could now be produced before the Parliament, as a pretended instruction of his inditement. And this *per se* is sufficient to demonstrate to the World, That my Lord Advocates commentar and exposition of that pretended letter, is only groundless and conjectural: And doth redargue the Faith of his Commentars thereupon. 4<sup>to</sup>. Whereas it is pretended by my Lord Advocates commentar upon this letter, That the pannel desired a Gift from the late King of the Clerkship of *Edinburgh*, in favours of Mr. Patrick Smith, or his son, upon the account that his Wife had been long imprisoned upon the pannals account; And that the pannel would have been starved if she had not supplied him. It is answered, 1<sup>mo</sup>. That it is absolutely denyed, that ever Mr. Patrick Smiths Wife was imprisoned upon the pannals account, or that ever she was imprisoned since the pannel came to *Scotland*: Neither doth the pannel know if she be fled or not, or upon what account. And Mr. Patrick Smith is known to be in that circumstances, that he is even much straitned as to the maintenance of himself and his family. 2<sup>do</sup>. Could the pannel be pretended to be so ridiculous, (unless he had been under some melancholly distemper,) to write for the Gift of a Clerkship, where there was no Vaccumie, *James Mackleod* being then in possession of the equal half of the place, long before Sir *James Rastbuds* decease, And being secured in the survivancie of the other half many years before: And that Clerkship being known to be not at the Kings disposal, but only at the disposal of the Town Council, when vvacant. And to clear the High Court of Parliament, That this is only a designed stretch, for loading of the pannel, when the debates were betwixt the Old and New Councils of *Edinburgh*, upon their Elections: There was an other person then specially condescended upon, as designed for that Clerkship.

And as to that pretence, That in the said Letter by the word (Agents) is understood, My Lord Advocate, and Lord Justice Clerk, in respect they were nominate to these Employments by the King, about four dayes before the date of that pretended Letter, viz: upon the 28 of *November*; And this pretended Letter, is alledged to be dated the third of *December* thereafter. It is answered, that seeing it is impossible, that what was done at *London* upon the 28 of *November*, could have come to the Pannals Knowledge, who was then a prisoner at *Blackness* in so few dayes, in that Season of the year: This doth convincingly redargue that part of my Lord Advocates Commentar; And the pannel is content to depose, That he never knew or heard of my Lord Justice Clerk his being preferred untill he did see his Lordship, latelie in the *Townbooth* of *Edinburgh*. And, That he never heard of my Lord Advocates preferment, untill long after the date of that pretended letter. And therefore it is referred to the Justice and Wisdom of the High Court of parliament, Whether or not such uncertain conjectures, as to all the Branches of my Lord Advocates Commentar and Exposition of that letter, evidently appears to be, Can by the Law of this or any other Kingdom be sustained, as is a clear and convincing probation to fix a Criminal Guilt upon a poor Stranger to take away his Life! And as the said Letter appears to be the nonsensical product of a disturbed Brain in all the points thereof; So there is neither any thing lybelled or produced, which can instruct any one of the Names or Particulars therein contained to be the same, which My Lord Advocate affirms and supposes in his Exposition.

And seeing by the Claime of Right of this Kingdom, (and which the Petitioner humbly conceives to be equivalent to the Petition of Right in *England*;) the great and unquestionable Securitys of the Subjects of his Native Kingdom. It is expressly declared, that the pursuing persons, upon stretches from old and Obsolete Laws or upon Frivolous and Weak Pretences, or Lame and Defective Probation, are contrair to Law, and that there was a Criminal Libel offered to be founded upon such Weak and Frivolous Pretences as this: The foundation thereof, being only a pretended Missive Letter, neither subscribed nor directed nor delivered to any person; But as it appears to be the Melancholy Product of a disturbed Brain. So also it appears to have been casually lost and neglected, and as there can neither Sense nor Crime be inferred from the Letter it self; So all that is libelled against the Pannel as Criminal therefrom, is only founded upon My Lord Advocates own Fancie and Conjecture. So the Probation offered therefore, viz. *Comparatio Literarum*, being such as never was yet sustained in any Court, for taking away the Life of a Man; The Pannel humbly conceives, that this Libel and Probation offered against him, by the foresaid Clause in the Claime of Right, is expressly declared to be contrair to Law. And therefore, albeit the Pannel be a poor Stranger, and that he be also unknown to the Members of this Honourable Court of Parliament, as he is ignorant of the Laws of this Kingdom: Yet seeing it is his Misfortune (and for which he is heartily sorry) to be indicted and accused of such high and Atrocious Crimes. He judges himself happy in this, that he is to be tryed before My Lord Commissioner, his Grace, and the Honourable Estates of Parliament, of whose impartial Justice to a poor Stranger now pursued for his Life, he is not in the least doubtfull, but on the Contrair out of the Consciousness of his own Innocence, doth repose an entire Confidence in their impartial Justice. And humbly expects therefrom to be absolved from his groundless lybel, which contrair to the claime of Right, is only founded upon frivolous and weak pretences, and craved to be supported and made out by a Lame and Defective Probation in manner Above represented.